

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Allocation of Spectrum Below)
5 GHz Transferred from)
Federal Government Use)

ET Docket No. 94-32

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To: The Commission

REPLY COMMENTS OF AMERICAN TELECASTING, INC.

American Telecasting, Inc. ("ATI"), by its counsel, hereby
replies to the comments submitted in response to the Second
Notice of Proposed Rulemaking herein.¹

I. INTRODUCTION

The majority of commenters participating in this proceeding
support the Second NPRM's proposed allocation of the 4660-4685
Mhz band for general fixed and mobile use in the new General
Wireless Communications Service (GWCS), and agree with the
Commission's conclusion that the predominant use of this band is
likely to be for subscriber-based services, warranting
application of the Commission's competitive bidding process.²

¹ Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use,
Second Notice of Proposed Rulemaking, ET Docket No. 94-32, FCC 95-47 (rel.
Feb. 17, 1995) (the "Second NPRM").

² Continuing to press a minority view, The Association for Maximum Service
Television, Inc. and Other Major Television Broadcasting Entities ("Joint
Television Parties") reiterates its request for allocation of the entire 4660-
4685 MHz band for exclusive use by the Broadcast Auxiliary Service ("BAS").
Apart from failing to support the facially erroneous contention that "[f]ew
other uses have been proposed for this band and no use other than auxiliary
broadcasting would support such an important function as the delivery of
breaking news events" (Comments of Joint Television Parties, p. i), the Joint
Parties argue, among other things, that essential characteristics of BAS "make
sharing virtually impossible with other services." Comments of Joint
Television Parties, p. 11. To the extent this argument has merit, the needs
of BAS might more appropriately be considered in a future transfer of spectrum
from federal government use.

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The Commission should proceed accordingly to expeditiously conclude this proceeding and to set about licensing commercial GWCS providers.

II. THE COMMISSION SHOULD MAXIMIZE EFFECTIVE USE OF THE GWCS SPECTRUM BY ADOPTING SMALLER SERVICE AREAS AND LIMITING AGGREGATION OF SPECTRUM

ATI is gratified that a number of comments filed in response to the Second NPRM lend support to its position (ATI Comments, pp 3-4) that the Commission should opt for substantially smaller GWCS service areas than the Major Trading Areas ("MTAs") tentatively proposed in the Second NPRM.³ Not surprisingly, commenters supporting use of MTAs represent the largest of potential users (e.g., Bell Atlantic Comments, p. 4), companies whose size and resources would make them uniquely able to meet build-out requirements for MTA service area licensing. MTA service areas would limit not only the variety of economic uses of GWCS spectrum (in contravention of the Commission's stated objective of "enhancing the ability of service providers to meet a variety of user needs"), but would tend to drastically limit the pool of eligible bidders for GWCS licenses to only the larger entities.⁴ At most, the Commission should designate the Rand

³ See Further Comments of The Wireless Cable Association International, Inc. ("WCAI"), pp. 7-8; Comments of Leaco Rural Telephone Cooperative, Inc. ("Leaco is opposed to the Commission's award of licenses to large geographic areas where only a handful of companies are able to acquire the licenses") p. 7. While deferring to the FCC's discretion to award spectrum on an MTA basis, the U.S. Small Business Administration "generally supports awards of licenses on a Basic Trading Area (BTA) basis because it requires less capital to obtain a license and construct an operational system." SBA Comments, p. 3.

⁴ Unlike the situation presented in PCS, where sufficient spectrum was available for three 30 MHz and three 10 MHz frequency blocks, enabling the Commission to license some frequency blocks to MTAs and others to BTAs, here the Commission must choose.

McNally Basic Trading Areas ("BTAs") as service areas for the new GWCS. As noted in ATI's Comments (pp. 3-4), the use of MTAs would tilt the playing field dramatically in favor of the larger players, adversely affecting the development of "niche" services, competition and a diversity of service providers.

There also appears to be widespread support for the use of the 5 megahertz channelization plan proposed by the Commission in its Second NPRM. However, given that there are only five 5 megahertz channels available under the Commission's channelization plan, and that the GWCS is intended to serve a variety of uses, it is important that the Commission reconsider its tentative proposal to allow a single licensee to aggregate as many as 15 megahertz of spectrum, three of the five available licenses. The Commission should limit aggregation to no more than 10 megahertz, thereby allowing for at least three licensees in each service area.

III. THE COMMENTS SUPPORT THE NEED TO INCORPORATE AN ENTREPRENEURIAL SET ASIDE AND SMALL BUSINESS BIDDING PREFERENCES IN A GWCS COMPETITIVE BIDDING PROCEDURE

ATI continues to believe that the opportunity presented by the established wireless cable subscriber base and the unique ability of wireless cable to serve as an "instant" in-place alternative to the interactive capabilities of existing telephone and cable plant warrant a direct allocation of frequencies for a wireless cable return channel. In its comments, however, ATI urged that if the Commission proceeds as proposed in the Second NPRM to license GWCS frequencies for general mobile and fixed use through a competitive bidding process, at a minimum the

Commission should establish an "entrepreneurial" set aside of at least two 5 MHz channels within the 4660-4685 MHz GWCS frequency block that would be reserved for applicants meeting maximum revenue and asset criteria, such as those established by the Commission for eligibility to bid for the Block C and F Broadband PCS allocations,⁵ and would thereby at least allow wireless cable operators to bid for spectrum in competition with other comparably smaller business entities. As stated by the Small Business Administration, "the single best method for reducing the barriers to [smaller company] entry in the 4660-4685 band is to establish an entrepreneur's block in which large businesses would be prohibited from bidding."⁶ In this regard, ATI urges the Commission to adopt the criteria for "small business" used in PCS.⁷

IV. CONCLUSION

ATI urges the Commission to proceed with the adoption of rules governing use and licensing of the frequencies assigned to the GWSC band consistent with the views expressed in its comments and reply comments herein.


⁵ Under this standard, bidders would be required to have gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million.

⁶ SBA Comments, p. 5. See also, WCAI Further Comments, pp. 5-7.

⁷ As noted by the SBA, use of the PCS \$40 million annual revenue threshold in the GWCS context is appropriate because "it is consistent with the definitions adopted by the Commission for other services and approved by the Small Business Association pursuant to 15 U.S.C. § 632(a)(2)." Further, while setting apart companies that "have significantly greater difficulty in obtaining capital than larger enterprises, . . . companies with revenue of \$40 million are sufficiently large that they could survive in a competitive wireless communications marketplace." SBA Comments, p. 6.

Respectfully submitted,

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April 4, 1995

CERTIFICATE OF SERVICE

I, Elizabeth A. Fertig, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 4th day of April, 1995, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing Reply Comments of American Telecasting, Inc. to the following:

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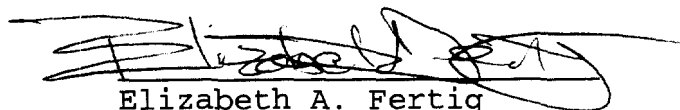
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